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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
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April 5, 2016

Captain Steven Katz
Homicide Bureau
Los Angeles Sheriff's Department
1 Cupania Circle
Monterey Park, California 91755

Dear Captain Katz:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 4, 2015, non-fatal shooting of Paul Valenzuela by Deputy Gilbert Lozano. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

JAMES GARRISON
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Gilbert Lozano, #[redacted]

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MEMORANDUM

TO:	CAPTAIN STEVEN KATZ Homicide Bureau Los Angeles Sheriff's Department 1 Cupania Circle Monterey Park, California 91755
FROM:	JUSTICE SYSTEM INTEGRITY DIVISION Los Angeles County District Attorney's Office
SUBJECT:	Officer Involved Shooting of Paul Valenzuela J.S.I.D. File #15-0290 L.A.S.D. File #015-02566-0861-151
DATE:	April 5, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 4, 2015, non-fatal shooting of Paul Valenzuela by Los Angeles Sheriff's Department (LASD) Deputy Gilbert Lozano. We have concluded that Deputy Lozano acted lawfully in self-defense and defense of another.

The District Attorney's Command Center was notified of the shooting at 7:20 p.m. on June 4, 2015. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, firearms analysis reports, photographic evidence and witness statements submitted to this office by Detectives John O'Brien and Domenick Recchia from the LASD Homicide Bureau. The voluntary statement of Deputy Lozano was considered in this analysis.

FACTUAL ANALYSIS

On June 4, 2015 at approximately 5:50 p.m., Deputies Gilbert Lozano and Wayne Countryman were working as partners assigned to the San Dimas station.[1] Countryman was driving a patrol car east on Covina Boulevard just west of Barranca Avenue when they saw a white four-door Chevrolet Malibu, driving westbound toward them.[2] Countryman noticed the driver, later identified as Paul Valenzuela, pulling himself up close to the steering wheel with his right hand while holding a black semi-automatic handgun in his left hand. Valenzuela's left hand was extended up and he was waving the firearm inside of the vehicle. As the Chevrolet Malibu drove past the patrol car, Countryman saw Valenzuela quickly hit his brakes, slowing the vehicle for a moment, but then quickly speed away, westbound on Covina Boulevard. Countryman made a U-turn and followed

[1] Lozano and Countryman had been partners for approximately one month. On this day they were assigned to the summer suppression team (SST) and were working the hours of 3:00 p.m. to 1:00 a.m. They were both wearing their tan and green Class "A" uniforms and driving a marked Sheriff's Department black and white patrol vehicle.
[2] The Malibu is registered to [redacted] the [redacted] of Valenzuela's [redacted]

the Malibu west on Covina Boulevard. Countryman told Lozano "417."[3] The Malibu quickly accelerated and abruptly turned north into a "K-Mart" parking lot, continuing west through the parking lot and out onto Citrus Avenue. The Malibu "fishtailed" and continued to accelerate north on Citrus Avenue.

Countryman activated the lights and sirens of his patrol vehicle in an attempt to conduct a traffic stop of the Malibu. However, Valenzuela refused to stop and continued to drive away from the deputies at speeds of approximately 70 to 80 mph.[4] Lozano requested assistance and an airship. The pursuit continued north on Citrus to eastbound Gladstone Street, to north on Fairvale Avenue, then westbound on Armstead Street and back onto Citrus Avenue, traveling north. During the pursuit, Valenzuela failed to stop at several posted stop signs and signal lights.[5] Valenzuela was moving erratically inside the vehicle reaching down to the floorboard and center console, during the time of the pursuit.

The pursuit ended as both the Malibu and the patrol vehicle drove north on Citrus Avenue approaching Alosta Avenue. Due to the large amount of traffic stopped at a red light on Citrus Avenue and Alosta Avenue, the Malibu came to a stop facing north on Citrus Avenue close to the drive-through portion of [redacted] At that point, Lozano and Countryman exited their vehicle in an attempt to contain Valenzuela in his vehicle. As the deputies were giving orders to Valenzuela, he climbed across the front passenger seat and exited the vehicle through the passenger side.[7]

Both deputies verbally ordered Valenzuela to stop and raise his hands. Valenzuela refused and instead, lowered his right hand toward his waistband. Lozano, fearing for his safety and knowing Valenzuela was armed, fired one round from his service weapon.[8] Valenzuela then fled eastbound through the parking lot of the [redacted] restaurant located at the southeast corner of Citrus Avenue and Alosta Avenue. Both Lozano and Countryman pursued Valenzuela on foot, eastbound through the parking lot. During the foot pursuit, Countryman saw Valenzuela throw a handgun onto a grassy area east of the [redacted]

After chasing Valenzuela for approximately one hundred yards, Lozano and Countryman lost sight of him. As they searched for Valenzuela, an unrelated male in a pickup truck pointed underneath a parked vehicle and advised the deputies that the suspect was hiding under the vehicle. Lozano and

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[3] Penal Code section 417 is the unlawful brandishing of a firearm.
[4] Valenzuela evaded the deputies at speeds of approximately 70-80 mph through commercial and residential areas with posted speed limits ranging from 25-45 mph.
[5] Valenzuela failed to stop at signaled red lights at the following intersections: Citrus Avenue at Arrow Highway, Citrus Avenue at Baseline Road and a posted stop sign at Fairvale Avenue at Gallard Street.
[6] The northeast portion of the intersection of Citrus Avenue and Alosta Avenue consists of Azusa Pacific University. The southeast portion of the intersection where the incident occurred is identified as "College Square Shopping Center" and includes numerous businesses including a [redacted] just northeast of where the pursuit ended.
[7] Neither Lozano nor Countryman saw other occupants in the vehicle, however, Countryman reported that Valenzuela appeared to be struggling to get over the passenger side of the seat, which led Countryman to believe that Valenzuela may have climbed over an occupant in the front passenger seat to get out of the vehicle.
[8] Lozano was armed with a department approved Smith & Wesson, M&P9, 9mm semi-automatic pistol.

Countryman located Valenzuela under the vehicle and took him into custody. Valenzuela was found to have suffered a through and through gunshot wound to the upper torso.[9]

After assisting units arrived on scene, Countryman returned to the location in the [redacted] parking lot where he had seen Valenzuela toss a firearm and recovered a .380 semi-automatic handgun.[10]

Voluntary Statement of Gilbert Lozano

Deputy Lozano provided a voluntary statement to investigators from a hospital room at Foothill Presbyterian Hospital, where he was taken due to high blood pressure and chest pains following the shooting and foot pursuit of Valenzuela. At the time of the interview, Lozano told investigators that he felt much better and wished to make a statement.

Lozano stated that Countryman was driving the patrol vehicle and he was the passenger at the time of the pursuit. They were driving east on Covina Boulevard just west of Barranca Avenue when they noticed a vehicle driving west on the opposite side of the street toward them at a high rate of speed. Countryman made a U-turn in order to conduct a traffic stop of the vehicle. At that time, Lozano saw that the driver was holding a firearm with his left hand in an upward direction toward the roof of the vehicle. Lozano and Countryman discussed the fact that the suspect had a firearm. As they followed the vehicle, it suddenly sped away at a high rate of speed. They activated their lights and sirens and advised assisting units via Sheriff's radio that they were in pursuit of a "417 vehicle." Lozano stated that the suspect drove in excess of 50 miles per hour, in and out of heavy traffic, failing to yield to several stop signs and traffic lights. During the pursuit, both Lozano and Countryman noticed the driver making furtive movements around the interior of the vehicle, including reaching down and across the vehicle. Lozano was unable to see any other occupants in the vehicle at that time.[11]

The pursuit took them northbound on Citrus Avenue, north of the 210 freeway. As the pursuit approached Alosta Avenue, Lozano noticed that traffic had stopped for the light at the intersection, causing traffic to back up several car lengths on Citrus Avenue. With a center divider to the left and a curb to the right, Valenzuela was unable to drive past the standing traffic. The patrol vehicle came to a stop behind the Malibu and Lozano exited the passenger side of the vehicle. He took

[9]Valenzuela was transported by helicopter to Los Angeles County USC Medical Center where he was treated for a gunshot wound to the upper right chest/shoulder area with an exit wound to the right arm. He was medically cleared and released to Sheriff's custody on June 5, 2015. Valenzuela was subsequently charged in criminal case number KA109882 with possession of a firearm by a felon (PC 29800(1)); fleeing a pursuing peace officer's motor vehicle while driving recklessly (VC 2800.2);and possession of ammunition (PC 30305(a)(1)). On June 9, 2015, Valenzuela pled no contest to all felony charges and admitted a prior strike. He was sentenced to four years in state prison.
[10] The recovered firearm was a .380 caliber, semi-automatic pistol, "Taurus", model P7738, serial number [redacted]. The firearm was loaded with two live rounds and appeared to be in good working condition. There is no record of this firearm on Automated Firearms System (AFS). No latent prints were found on the firearm or magazine.
[11]Investigators later learned that Valenzuela's [redacted] and her [redacted] old [redacted] were in the vehicle with Valenzuela during the pursuit. When Valenzuela exited the vehicle, [redacted] took the [redacted] and fled the scene by flagging down a bystander and requesting him to drive them to a taco stand in Baldwin Park in exchange for twenty dollars.

approximately three steps eastbound toward the curb in order to distance himself from the patrol vehicle to avoid being pinned between his car door and the body frame if Valenzuela decided to shift his car into reverse and back into the patrol car.

From his position outside of the patrol car, Lozano saw Valenzuela climb over the passenger seat and open the passenger door. Valenzuela quickly jumped out of the vehicle. Lozano initially saw that Valenzuela's hands were up and he ordered Valenzuela to turn around so that Lozano could visually inspect him for weapons. However, Valenzuela failed to comply with his orders and dropped his right hand to his waistband. Based on the fact that Lozano had seen Valenzuela holding a firearm during the pursuit, and now seeing Valenzuela quickly drop and move his hand toward his waistband, Lozano believed Valenzuela was reaching for a firearm. Fearing for his safety, Lozano fired one round from his duty weapon. [12] Valenzuela grasped his chest and turned to his left. He failed to comply with orders to raise his hands and fled eastbound on foot. Valenzuela ran up a small embankment to the drive-through area of [redacted] located on the southeast corner of Alosta Avenue and Citrus Avenue. Lozano followed Valenzuela up the embankment and through the parking lot of the [redacted] restaurant. Countryman was behind Lozano in the foot pursuit.

As Valenzuela ran to the east side of the [redacted] restaurant, Lozano saw him discard an object with his left hand into the grass planter area of the parking lot. The foot pursuit continued northeast through the parking lot and up another grass embankment onto the sidewalk of Alosta Avenue, continuing along the south sidewalk of Alosta Avenue. At that point, Valenzuela was increasing the distance between himself and the deputies. As Valenzuela reached the east side of the next building (a bank), he turned south into the bank parking lot and out of view. Lozano and Countryman lost sight of Valenzuela. As they moved in a southerly direction through the parking lot, a civilian signaled to Countryman that Valenzuela was hiding underneath a vehicle. Countryman advised Lozano of this and Lozano directed Valenzuela to show his hands and come out from underneath the vehicle.

Valenzuela reached out with his right hand and Lozano pulled him out from beneath the vehicle. Valenzuela continued to squirm on the ground and attempted to get up. Lozano and Countryman restrained Valenzuela in order to safely handcuff him.[13] Valenzuela made an unintelligible statement about his "baby's mother and child," but Lozano was unsure what was specifically said.[14]

An examination of the Malibu revealed one projectile, consistent with ammunition used in Lozano's firearm, which was recovered from the front passenger side dashboard of the vehicle. Blood drops were also found on the front passenger side dashboard.[15] Also found in the vehicle were three cell phones and a wallet containing a California Identification Card bearing the name Paul Valenzuela.

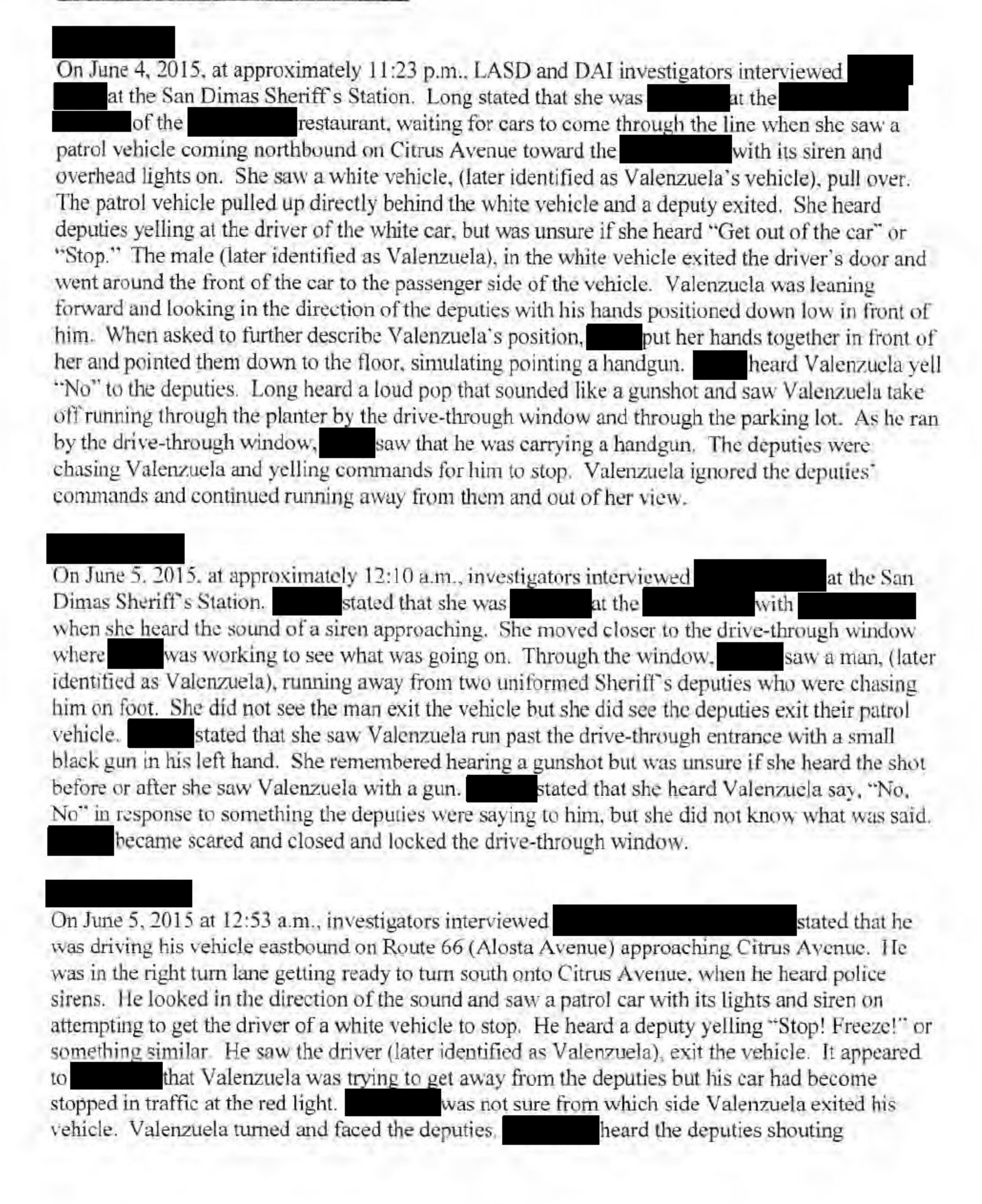
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[12] Detectives examined Lozano's firearm and observed one live round in the chamber and sixteen live rounds in the magazine. The capacity of this firearm is seventeen rounds in the magazine plus one round in the chamber for a maximum capacity of eighteen. This is consistent with Lozano firing one round.

[13] [redacted] assisted in handcuffing Valenzuela.

[14] Valenzuela invoked his Fifth Amendment privilege against self-incrimination and refused to make a formal statement.

[15] This is consistent with Valenzuela suffering a through and through gunshot wound while he was standing outside the passenger door of the Malibu.

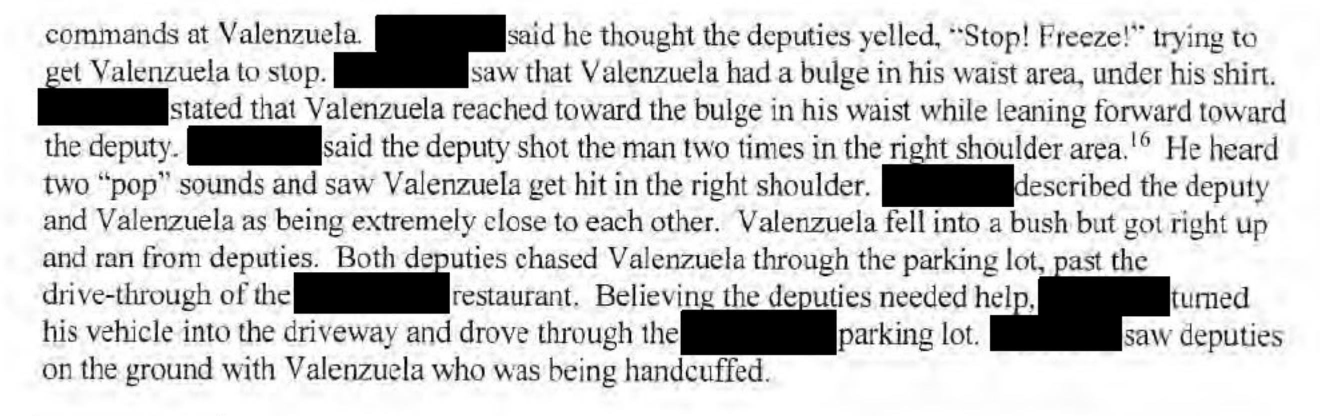


CIVILIAN WITNESS STATEMENTS

On June 4, 2015, at approximately 11:23 p.m., LASD and DAI investigators interviewed at the San Dimas Sheriff's Station. Long stated that she was at the of the restaurant, waiting for cars to come through the line when she saw a patrol vehicle coming northbound on Citrus Avenue toward the with its siren and overhead lights on. She saw a white vehicle, (later identified as Valenzuela's vehicle), pull over. The patrol vehicle pulled up directly behind the white vehicle and a deputy exited. She heard deputies yelling at the driver of the white car, but was unsure if she heard "Get out of the car" or "Stop." The male (later identified as Valenzuela), in the white vehicle exited the driver's door and went around the front of the car to the passenger side of the vehicle. Valenzuela was leaning forward and looking in the direction of the deputies with his hands positioned down low in front of him. When asked to further describe Valenzuela's position, put her hands together in front of her and pointed them down to the floor, simulating pointing a handgun. heard Valenzuela yell "No" to the deputies. Long heard a loud pop that sounded like a gunshot and saw Valenzuela take off running through the planter by the drive-through window and through the parking lot. As he ran by the drive-through window, saw that he was carrying a handgun. The deputies were chasing Valenzuela and yelling commands for him to stop. Valenzuela ignored the deputies' commands and continued running away from them and out of her view.

On June 5, 2015, at approximately 12:10 a.m., investigators interviewed at the San Dimas Sheriff's Station. stated that she was at the with when she heard the sound of a siren approaching. She moved closer to the drive-through window where was working to see what was going on. Through the window, saw a man, (later identified as Valenzuela), running away from two uniformed Sheriff's deputies who were chasing him on foot. She did not see the man exit the vehicle but she did see the deputies exit their patrol vehicle. stated that she saw Valenzuela run past the drive-through entrance with a small black gun in his left hand. She remembered hearing a gunshot but was unsure if she heard the shot before or after she saw Valenzuela with a gun. stated that she heard Valenzuela say, "No, No" in response to something the deputies were saying to him, but she did not know what was said. became scared and closed and locked the drive-through window.

On June 5, 2015 at 12:53 a.m., investigators interviewed stated that he was driving his vehicle eastbound on Route 66 (Alosta Avenue) approaching Citrus Avenue. He was in the right turn lane getting ready to turn south onto Citrus Avenue, when he heard police sirens. He looked in the direction of the sound and saw a patrol car with its lights and siren on attempting to get the driver of a white vehicle to stop. He heard a deputy yelling "Stop! Freeze!" or something similar. He saw the driver (later identified as Valenzuela), exit the vehicle. It appeared to that Valenzuela was trying to get away from the deputies but his car had become stopped in traffic at the red light. was not sure from which side Valenzuela exited his vehicle. Valenzuela turned and faced the deputies. heard the deputies shouting


commands at Valenzuela. said he thought the deputies yelled, "Stop! Freeze!" trying to get Valenzuela to stop. saw that Valenzuela had a bulge in his waist area, under his shirt. stated that Valenzuela reached toward the bulge in his waist while leaning forward toward the deputy. said the deputy shot the man two times in the right shoulder area.[16] He heard two "pop" sounds and saw Valenzuela get hit in the right shoulder. described the deputy and Valenzuela as being extremely close to each other. Valenzuela fell into a bush but got right up and ran from deputies. Both deputies chased Valenzuela through the parking lot, past the drive-through of the restaurant. Believing the deputies needed help, turned his vehicle into the driveway and drove through the parking lot. saw deputies on the ground with Valenzuela who was being handcuffed.

On June 4, 2015 at 11:10 p.m., investigators interviewed told investigators that he and a friend, had just exited a city bus and were standing on the northeast corner of Alosta Street and Citrus Avenue, (across the street from when he saw a police car approaching. He said the street was crowded with other vehicles and wondered how the police car would get past the other vehicles. He stated that he had a clear view of the southbound pedestrian traffic and the northbound vehicle traffic of Citrus Avenue. He saw the car that the police were chasing suddenly stop and a man, (later identified as Valenzuela), exit the car. did not see what side of the vehicle Valenzuela exited because other cars blocked his view. said Valenzuela started running from police and when Valenzuela was about two feet from his car, heard a single gunshot. He assumed that Valenzuela had been shot because he heard Valenzuela make a noise sounding like "awe." speculated that Valenzuela was two car lengths in front of the deputy when he was shot. was "sure" the deputy shot Valenzuela in the back because Valenzuela had his back facing the deputy when saw him. added that there were two men inside the white vehicle and that both men got out. He then stated that only one man got out of the white vehicle. said that he did not see a deputy approach the white car until after everything had occurred. He later stated that he was unsure if the man that was shot had exited the white car. admitted that he did not see the foot chase until he saw Valenzuela run between the toward Alosta and then run in an easterly direction out of his line of sight. stated that Valenzuela did not have anything in his hands and reiterated that he was shot in the back by the police.[17]

Several other witnesses were interviewed by investigators but their statements were not particularly probative because they either did not see the shooting, or they did not pay sufficient attention to Valenzuela to observe whether or not he was holding a weapon.

[16] Forensic analysis confirmed that only one shot was fired.
[17] statement is largely inconsistent with the other eye-witnesses. His purported observation that Valenzuela was shot in the back is contradicted by the medical evidence and other witnesses' statements.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.* "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

CONCLUSION

The evidence examined in this investigation shows that Deputies Lozano and Countryman saw Valenzuela waving a firearm in his vehicle prior to leading them on a high speed pursuit through both commercial and residential areas. Forced to stop his vehicle because of traffic, Valenzuela climbed over the passenger seat to exit his vehicle through the passenger door. The immediate area was populated with drivers stuck in traffic as well as shoppers and diners. Valenzuela failed to comply with orders by both deputies to turn around and when he did, he reached his hand to his waistband. Knowing that Valenzuela was armed during the pursuit, and fearing that Valenzuela was reaching for his gun, Lozano fired one shot, hitting Valenzuela and ending the threat to himself and others. We conclude that Deputy Lozano acted lawfully in self-defense and defense of others. We are therefore closing our file and will take no further action in this matter.